



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R01-OAR-2021-0883; FRL-10221-01-R1]

#### Notification of Memorandum of Agreement; Massachusetts; Clean Air Act (CAA) Sections 111(d) and/or 129 Federal Plan Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification.

**SUMMARY:** On October 15, 2021, the United States Environmental Protection Agency's (EPA) Region 1 Acting Administrator signed a Memorandum of Agreement (MOA) between the Massachusetts Department of Environmental Protection (MassDEP) and EPA Region 1 regarding existing affected sources subject to Clean Air Act (CAA) sections 111(d) and/or 129 Federal Plan requirements. Subsequently, the MOA became effective upon signature of the MassDEP Commissioner on November 9, 2021. This document is informing the public of the MOA and making a copy of the document accessible.

**DATES:** On November 9, 2021, the MOA between EPA Region 1 and MassDEP was finalized upon signature of both parties.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0883. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that, if possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05-2, Boston, MA, 02109-0287. Telephone: 617-918-1652. Fax: 617-918-0652 Email: [kilpatrick.jessica@epa.gov](mailto:kilpatrick.jessica@epa.gov).

**SUPPLEMENTARY INFORMATION:** As a result of MassDEP's expressed interest in exercising its authority in the implementation and enforcement of CAA sections 111(d) and 129 Federal Plan requirements for existing sources in Massachusetts, EPA Region 1 developed and submitted a preliminary draft of the MOA to MassDEP for its feedback in April 2020. Region 1 staff and legal counsel worked with MassDEP Air and Climate Programs staff and legal counsel to develop an agreed upon final draft.

Both EPA and MassDEP agree that the MOA is mutually advantageous and an effective mechanism to protect air quality. Accordingly, the MOA was signed by the Acting EPA Region 1 Administrator on October 15, 2021, and was signed by the MassDEP Commissioner on November 9, 2021. It addresses the functions MassDEP will assume, and the authorities EPA will continue to retain, for the implementation and enforcement of the CAA section 111(d) and/or section 129 Federal Plan requirements for affected sources in the Commonwealth of Massachusetts.

The MOA delineates the scope of the agreement, the mechanism of coordinating implementation and enforcement authority of the Federal Plan requirements via MassDEP's Title V operating permit program, standards affected by this MOA, the roles and responsibilities MassDEP will assume as well as those that EPA will continue to retain, and the administration of this agreement. The Federal Plans that are specifically covered by this MOA are codified at title 40 Code of Federal Regulations (CFR), part 62, subpart JJJ (for "small municipal waste combustors"), subpart LLL (for "sewage sludge incinerators"), and subpart OOO (for "municipal solid waste

landfills”). Furthermore, the MOA also describes the method by which EPA and MassDEP will coordinate the implementation and enforcement of future Federal Plans.

The text of EPA Region 1’s and MassDEP’s MOA, effective November 9, 2021, is reproduced below:

Memorandum of Agreement Between the Massachusetts Department of Environmental Protection  
and the United States Environmental Protection Agency Regarding Existing Affected Sources  
Subject to Clean Air Act Sections 111(d) and/or 129 Federal Plan Requirements

**I. Introduction**

A. The purpose of this Memorandum of Agreement (MOA) is to coordinate implementation and enforcement responsibilities and authorities between the U.S. Environmental Protection Agency, Region 1 (EPA), and the Massachusetts Department of Environmental Protection (MassDEP) with respect to the Federal Plan requirements for affected sources<sup>1</sup> promulgated by EPA pursuant to Clean Air Act (CAA) section 111(d) and/or section 129, as further specified herein. The CAA section 111(d) and/or section 129 Federal Plans that are covered by this MOA are codified at Title 40 Code of Federal Regulations (CFR), Part 62, subpart JJJ (for “small municipal waste combustors”), subpart LLL (for “sewage sludge incinerators”), and subpart OOO (for “municipal solid waste landfills”). In addition, this MOA details the process by which future federal plans promulgated under Part 62 will be implemented and enforced by MassDEP should it accept to exercise this responsibility. This MOA does not cover “large municipal waste combustors” subject to the State Plan approved by EPA and codified at 310 CMR 7.08(2).

B. MassDEP and EPA concur that it is mutually advantageous and the best use of resources to coordinate their efforts in the implementation and enforcement of these Federal Plans by entering this MOA.

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<sup>1</sup> As used in this MOA, the term “affected source” refers to a source subject to a Federal Plan promulgated under CAA section 111(d) and/or section 129.

C. MassDEP and EPA affirm their commitment to an effective partnership and agree to review this MOA from time to time, as necessary.

## **II. Scope**

A. MassDEP will exercise its authority to implement and enforce the CAA section 111(d) and/or section 129 Federal Plans for affected sources in the Commonwealth of Massachusetts through its Title V operating permits as required under Title V of the CAA (Title V operating permit program), as codified in Massachusetts regulations at 310 CMR 7.00: *Appendix C. See* 61 FR 31442 and 66 FR 49541. Tribal lands with affected sources, if any, are not subject to this MOA.

B. This MOA addresses the functions MassDEP will assume, and the authorities EPA will continue to retain, as they pertain to the implementation and enforcement of the CAA section 111(d) and/or section 129 Federal Plans for affected sources.

## **III. Mechanism**

A. As outlined in this MOA, MassDEP will exercise its authority to implement and enforce the emission standards and other applicable requirements contained in the section 111(d) and/or 129 Federal Plans for affected sources through MassDEP's Title V operating permit program, as codified in Massachusetts regulations at 310 CMR 7.00: *Appendix C*.

B. In its Title V operating permit program, MassDEP defines "applicable requirement" as:

"...all of the following as they apply to emissions units or control equipment in a facility subject to the requirements of Massachusetts Code 310 CMR 7.00: *Appendix C (Appendix C)*. This includes requirements that have been promulgated or approved by EPA through rule making at the time of issuance but have future-effective compliance dates:

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[c]Any standard or other requirement under 42 U.S.C. 7401, The Clean Air Act, §111, including §111(d) (New Source Performance Standards (NSPS));

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[g]Any standard or other requirement governing solid waste incineration, under 42 U.S.C. 7401, The Clean Air Act, §129;”

*See 310 CMR 7.00 Appendix C section (1) Definitions.*

C. In accordance with the language above, MassDEP has the authority to implement and enforce CAA section 111, including CAA section 111(d) and/or section 129 Federal Plan standards, through MassDEP’s Title V operating permit program.

D. MassDEP will implement and enforce CAA section 111(d) and/or section 129 Federal Plan standards by including such standards as applicable requirements in affected sources’ Title V operating permits when such permits are issued or revised.

E. MassDEP has the following authorities to implement the program:

1. Requesting information on applicable requirements in affected sources’ Title V operating permit applications. Through 310 CMR 7.00: *Appendix C* (3) and (10)(a), MassDEP is authorized to apply 111(d) and/or 129 Federal Plan requirements by requesting and receiving operating permit applications, as well as records relating to the operating permit or the emission of air contaminants;
2. Requesting and receiving records relating to the emission of air contaminants. Through 310 CMR 7.00: *Appendix C* (10)(a), MassDEP is authorized to request and receive records relating to the Title V operating permit or the emission of air contaminants;
3. Requiring that all applicable State and Federal requirements be included in Title V operating permits. Specific conditions related to CAA section 111(d) and/or section 129 Federal Plans will be included in an affected source’s Title V operating permit

by MassDEP through 310 CMR 7.00: *Appendix C(3)(g)1*, which specifies that all applicable requirements must be included in an operating permit;

4. Enforcing all conditions and requirements of its Title V operating permits.

Enforcement of the CAA section 111(d) and/or section 129 Federal Plans will be exercised by MassDEP through its enforcement provision in 310 CMR 7.00:

*Appendix C (3)(f)*, which states that an *Appendix C* qualifying facility is subject to enforcement pursuant to the Massachusetts General Laws and regulations thereunder if a violation of *Appendix C* occurs. Penalties for such violations are outlined in M.G.L. c. 111, §§ 142A and B. MassDEP also has authority to issue civil administrative penalties for noncompliance violations pursuant to M.G.L. c. 21A, § 16, and 310 CMR 5.00.

#### **IV. Standards Affected by this MOA and Mechanism for Accepting Future Standards**

A. Upon the effective date of this MOA, EPA recognizes MassDEP as having implementation and enforcement authority for Part 62, subpart JJJ (for “small municipal waste combustors”), subpart LLL (for “sewage sludge incinerators”), and subpart OOO (for “municipal solid waste landfills”) upon issuance of a Title V operating permit with applicable requirements for those standards written into the source-specific permit.

B. When EPA establishes future CAA section 111(d) and/or section 129 Federal Plan standards, EPA will notify MassDEP by forwarding a copy of the applicable regulations via a letter asking whether the standard is applicable to sources in Massachusetts and whether MassDEP intends to accept implementation and enforcement authority of the standard through issuance of a Title V operating permit with applicable requirements for those standards written into the source-specific permit. MassDEP will notify EPA by letter whether MassDEP intends to accept implementation and enforcement authority of the standard through issuance of Title V operating permits to applicable sources.

## **V. Roles and Responsibilities of MassDEP and EPA**

A. MassDEP and EPA agree to maintain a high level of communication, coordination, and cooperation between their respective staffs to assure the successful and effective administration and implementation of the CAA section 111(d) and/or section 129 Federal Plans for affected sources.

B. EPA commits to provide MassDEP with technical support and assistance in its implementation of CAA section 111(d) and/or section 129 Federal Plans for affected sources, as necessary.

C. Both parties agree to the following procedures:

1. MassDEP shall exercise its authority for the implementation and enforcement of CAA section 111(d) and/or section 129 Federal Plan standards in Title V operating permits, except for applicable sources, if any, in Tribal lands. Such implementation and enforcement shall include as appropriate:
  - a. Distribution of informational letters and information to potentially affected sources;
  - b. Receiving and reviewing notices, reports, and compliance certifications;
  - c. Conducting compliance inspections;
  - d. Preparing inspection reports and sharing with EPA those reports which find violations;
  - e. Requiring submittal of, receiving, and reviewing Title V operating permit applications from affected sources;
  - f. Expeditiously issuing or revising existing Title V operating permits for affected sources, as needed, to include the CAA section 111(d) and/or section 129 Federal Plan standards;
  - g. Assuring compliance through implementation and enforcement of the Title V operating permit program for affected sources; and

- h. In instances where an affected source is required to develop pollution control parameter operating limits based on periodic testing, ensuring that such parameter operating limits are enforceable after the date of a successful performance test and the parameter operating limits are incorporated into a monitoring plan as expeditiously as possible.
- 2. EPA retains its implementation and enforcement authorities for CAA section 111(d) and/or section 129 Federal Plans in Massachusetts. EPA retains sole authority for the following functions:
  - a. Alternative site-specific non-methane organic compounds (NMOC) concentrations or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate (for landfills);
  - b. Alternative emission standards;
  - c. Major alternatives to test methods;
  - d. Major alternatives to monitoring;
  - e. Waivers of record keeping;
  - f. Alternative monitoring parameters (if applicable);
  - g. Petitions for alternative control device monitoring parameters (where applicable); and
  - h. Implementation and enforcement in Tribal lands.

D. Nothing in this MOA shall constrain EPA's authority to fulfill its oversight and enforcement roles under the CAA. This MOA shall not be construed to contravene any provision for any associated CAA section 111(d) and/or section 129 Federal Plan requirements. Furthermore, this MOA is in addition to, and does not affect, other EPA approvals and/or delegations under the CAA, such as New Source Review, the Title V Permitting Program, and the State Implementation Plan.



E. Upon issuance of a Title V operating permit to an affected source, MassDEP will have the authority necessary to enforce the CAA section 111(d) and/or section 129 Federal Plan standards.

## **VI. Administration of this Agreement**

A. This MOA is effective when signed by both parties below and may be modified at any time upon the written agreement of MassDEP and EPA. This MOA may be terminated by either signatory at any time after proper written notice.

1. EPA and MassDEP may execute this MOA by handwritten or electronic signatures.
2. To ensure the validity of any electronic signatures and the legal enforceability of this MOA, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. MassDEP signatures will comply with all applicable Massachusetts e-signature laws and policies. At a minimum, an electronically signed document must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) the unique identity of the individual who signed the document and their intent to sign; and (3) the date and time it was signed. Once the MOA is signed by a party, the document must be locked to prevent any further alteration of this document. An electronically signed MOA delivered by email or in hard copy shall be deemed an original document which shall be stored and managed in accordance with State and Federal recordkeeping requirements. EPA and MassDEP acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

B. Nothing in this agreement shall be construed to restrict in any way the authority of either MassDEP or EPA in fulfilling its responsibilities under State or Federal law, respectively.

## **VII. Signatures**

For the United States, Deborah Szaro, Acting Regional Administrator, EPA Region 1, October 15, 2021

For the Commonwealth of Massachusetts, Martin Suuberg, Commissioner, Massachusetts Department of Environmental Protection, November 9, 2021

This document informs the public of EPA Region 1 and MassDEP's November 9, 2021 MOA. In addition, a copy of the MOA signed by EPA Region 1 and MassDEP is available in the docket for this action identified in the **ADDRESSES** section above.

## **List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Administrative practice and procedure, Industrial facilities, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: September 15, 2022.

David Cash,  
Regional Administrator,  
EPA Region 1.

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